

The charge issued to the Misdemeanor Subcommittee of the Sentencing Commission in SB23 of the 2023 Session is broad; essentially to review and make recommendations for reform of the misdemeanor criminal system in the State of Nevada.

In order to further this mission, the Subcommittee appointed a Working Group to examine the current misdemeanor classification system in Nevada to determine if the current structure and system used for misdemeanor crimes is meeting the needs of the State and its citizens to achieve the following objectives:

- Discouraging behavior that is detrimental to public order and helping to maintain public safety;
- Holding offenders accountable while protecting individuals' rights to procedural and substantive due process;
- Effectuating a fairer justice system regardless of race and socioeconomic status;
- Providing opportunities for rehabilitation and community betterment;
- Using reasonable monetary penalties and fees, in a manner that is consistent with fostering accountability, not in a manner that relies on misdemeanor fines and fees as a primary funding mechanism for the juridical system or other essential government services; and
- Improving quality of life for the citizens of the State.

With these general objectives in mind, the Working Group spent time evaluating the current classification system and found it no longer is appropriate to meet the aforementioned objectives. This determination was based on many factors and perspectives, including an acknowledgment that one level of 'minor' crime, which currently includes offenses as diverse as battery constituting domestic violence and walking on and damaging the grass on State property, does not sufficiently capture the nature the various offenses and the disproportionate impact various criminal acts have on society<sup>1</sup>.

The Working Group recommends that the Sentencing Commission consider a multi-tiered misdemeanor classification system to better reflect the disparate impact various offenses have on individuals and society. While the Working Group acknowledges that implementing such a classification will take extensive work with stakeholders from across a broad spectrum of interests, these future efforts should not serve as a deterrent to modernizing the State's current system. The Working Group proposes a system of classification as follows:

<b>Offense Category</b>	<b>Jail Max</b>	<b>Fine Max</b>	<b>AA - Local</b>	<b>AA - State</b>
Class A Misdemeanor	6 mos.	\$1,000		
Class B Misdemeanor				
Class C Misdemeanor				
Petty Offense/Civil Infraction				

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<sup>1</sup> The first two battery constituting domestic violence offenses within 7 years are misdemeanors pursuant to NRS 200.485 as is injuring the grass on State grounds by walking upon it pursuant to NRS 331.200.

This multi-tiered classification allows for a more nuanced approach to criminal justice in Nevada by more appropriately recognizing the severity of various offenses and providing a tangible indication of the importance society places on the various forms of conduct it has chosen to prohibit.

In recent years, other States such as Colorado, have undertaken a reexamination and reclassification of misdemeanors and the Working Group has reviewed the initiatives and found them to be substantive efforts to improve the criminal justice system.

However, reclassification in and of itself is only part of the work to be done. The penalties and punishments associated with misdemeanor offenses must also be redefined to reflect the new classification and to begin to address other systemic inequalities inherent in the current one size fits all system.

Thus, the Working Group recommends that maximum penalties identified for each classification in the table above. The full impact of misdemeanor offenses on the community and individuals is not confined simply to the statutory scheme of classification. Currently, there is a diversity of statutes related to the punishment of misdemeanor offenses that appear through Nevada Revised Statutes, including offenses that carry penalties significantly higher than the existing statutory maximums, allowances for misdemeanor probation and suspended sentences, conversion of monetary penalties into community service, and options for diversion.

With these in mind, the Working Group recommends examining:

- Misdemeanor probation is statutory available, however many jurisdictions lack an appropriate alternative sentencing or probation apparatus so sometimes probation becomes a series of routine court appearances or status checks without appropriate supervision or support. The length of terms of misdemeanor probation should also be congruent with the maximum jail terms under each category;
- The criminal justice system, specifically local jails in the misdemeanor context, have become the de facto delivery system for mental health services, and increasing the availability and efficacy of community-based mental health services and other services, such as substance abuse treatment, could reduce engagement with the criminal justice system and divert people from jail;
- Currently, performing community service is afforded to those without the ability to pay fines and fees, however, limited jurisdiction courts report having an increasingly difficult time finding partner agencies and entities where defendants can perform community service and are not equipped to always effectively monitor compliance with community service sentences. Consideration should be given to expanding the statutory definition of community services to include such things as obtaining a GED or participation in community-based programming. Additionally, the State and local governments should consider formalizing and resourcing programs for community service;
- There is no current statutory definition of indigence with regards to paying misdemeanor fines and fees or a methodology for making such determinations leaving courts in a position to make these determinations without statutory guidance and without the staffing resources necessary to conduct individualized assessments. A statutory definition of indigence in this context should be considered as well as the development of a template document for the determination of the ability to pay;

- Nevada currently has system that attaches administrative assessments, based upon the fine amount, to misdemeanor convictions. For many years the revenue from these assessments has funding essential services like the operation of the Supreme Court. These fees can effectively double the amount of the legal financial obligation owed by a defendant and should be reviewed to make sure that they are appropriate and do not create an undue burden on people who become involved with the misdemeanor criminal justice system. In examining these administrative assessments, it should be noted that they provide an essential funding stream for both the collecting limited jurisdiction courts and the juvenile courts and juvenile probation systems in each county;
- There are a number of misdemeanor offenses contained within NRS that should be repealed for any number of reasons. Some statutes are woefully out of date and are no longer necessary or applicable, some statutes criminalize administrative errors, some criminalize citizens who don't assist authorities in carrying out arrests or fighting wildfires, some may conflict with both United States and Nevada Supreme Court case law, and some criminalize conduct like traveling between the counties of the State. There are also current misdemeanors that have penalties that are well outside the current statutory range, for example, there is mandatory \$5,000 fine for using a false or misleading degree which exceeds the regular statutory maximum fine by \$4,000.
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